IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 26271 of 2007(C)

PETITIONER:

K.J.SCARIAH, S/O. JOHN, AGED 51 YEARS,
PROPRIETOR OF CATHOLIC ART CENTRE, BROADWAY,
ERNAKULAM, RESIDING AT KURISINGAL HOUSE,
JAWAHAR ROAD, PALARIVATTOM, ERNAKULAM, KOCHI-25.

BY ADV. SRI.P.I.GEORGEKUTTY.

RESPONDENTS:
----

1. **STATE OF KERALA, REPRESENTED BY**
   CHIEF SECRETARY TO GOVERNMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE ACCOMMODATION CONTROLLER,**
   TALUK TAHSIL, ERNAKULAM.

3. **PUZHAKKARA ABDUL NAZAR, S/O. T.U.UMMER,**
   AGED 45 YEARS, PUZHAKKARA HOUSE, NEW MAHI,
   THALASSERY TALUK, KANNUR, REP. BY HIS POWER OF
   ATTORNEY C.NAJEEB, S/O. K.K.MOIDU, AGED 44 YEARS, R/AT
   THAMANNA, S.R.M.ROAD, THRIKKANARVATTOM DESOM,
   ERNAKULAM VILLAGE, KANAYANNOOR TALUK.

4. **C.NAJEEB, S/O. K.K.MOIDU,**
   ARCHITECT, AGED 44 YEARS, RESIDING AT THAMANNA,
   S.R.M.ROAD, THRIKKANARVATTOM DESOM,
   ERNAKULAM VILLAGE, KANAYANNOOR TALUK.

W.P.(C). NO.26271/2007:

5. M/S. RATHAN AND COMPANY,
A PARTNERSHIP FIRM, BROADWAY, ERNAKULAM, REP. BY IT'S MANAGING PARTNER, A.D.RATNAKARA SHENOI, AGED 61 YEARS, RESIDING AT DAMODAR NIVAS, T.D.ROAD, ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR,
ADV. SRI. YOUSEFF,
GOVT. PLEADER SRI. P.A. SALIM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.26271/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LETTER ISSUED BY QUEENI HALLEGUA TO THE PETITIONER DTD. 25/07/2003.

EXT.P.2: COPY OF THE PETITION TO THE R.2. DTD. 01/06/2007.

EXT.P.3 SERIES: PHOTOGRAPHS OF THE PROPERTY AND BUILDING AS ON 01/09/2007.

EXT.P.4: COPY OF THE REPRESENTATION TO THE R.6 DTD. 01/09/2007.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN, JJ.

W.P.(C) NO. 26271 OF 2007-C

Dated 7th September, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner is a tenant under the 3rd respondent. The building in which the tenanted room is situated, consists of five rooms. Three rooms on the northern side of the tenanted room are owned by the 4th respondent. The said respondent has already demolished them. By the demolition of those rooms, the stability of the room occupied by the petitioner is affected. So he has filed Ext.P2 application before the Accommodation Controller. Thereafter, this writ petition is filed, seeking the following reliefs:

> "(i) Issue a writ of mandamus or other appropriate writs, orders or direction commanding the 2nd respondent to see that respondents 3 and 4 will not demolish the vacant rooms on the north without ensuring safety to the life and property of the petitioner in the shop room.
>
> (ii) Issue appropriate direction to the 2nd respondent to dispose of Ext.P2 in accordance with law."

2. The learned counsel for the 5th respondent pointed out that the

submissions noticed above regarding the ownership of the tenanted premises and the adjoining rooms are not correct. According to him, respondents 3 and 4 are joint owners of all the five rooms. The learned counsel for respondents 3 and 4 denies the said submission. In this writ petition we are not concerned with the above dispute. The only point to be considered is whether this Court should ask the 2nd respondent to issue directions to respondents 3 and 4 as prayed for by the petitioner.

3. We feel that the petitioner has to move the 2nd respondent first. If no orders are passed or a wrong order is passed by the said respondent, the petitioner has a cause of action. The petitioner has only filed the main petition under Section 17 of the Kerala Buildings (Lease and Rent Control) Act. The said provision empowers the Accommodation Controller to pass interim orders even without hearing the other side. So, this writ petition filed without moving the Accommodation Controller for interim relief is not maintainable. The learned counsel for the petitioner submits that after the filing of this writ petition, the petitioner has moved a petition before the Accommodation Controller. But, we feel that filing of that petition will not save this writ petition, which is premature. Accordingly, it is dismissed without prejudice to the contentions of the petitioner and his right to move the Accommodation Controller for appropriate reliefs, in the petition stated

to have been filed by him already.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/